

HIGH COURT OF UTTARAKHAND AT NAINITAL

Civil Revision No. 53 of 2004

Abdul Jabbar Khan

.....Revisionist

Vs.

Julfikar.

.....Respondent

Hon. Rajesh Tandon, J.

Heard the learned counsel for the parties.

By the impugned order the applicant has prayed for setting aside the order dt. 11th August 2004, by which the application for impugned of the Nagar Palika has been refused.

Briefly stated the applicant has filed a suit praying for a decree of declaration in favour of the petitioner to the effect that without partition of the property the defendant may be restrained from using the property or making any constructions.

In paragraph 1 of the plaint it has been sated that the defendant is making the constructions without getting the map sanctioned. During the pendency of the suit the applicant has filed the application for amendment that the map was got sanctioned by the Nagar Palika illegally and further any entry in the Nagar Palika may be declared as void.

The amendment has been refused by the trial Court.

From the copy of the plaint as well as the copy of the appellant for amendment it is fully proved that the plaintiff has challenged the partition deed from the very beginning and any entry in the Nagar Palika or any sanction of the plan by the Municipal authorities are wholly void.

It is well established that the plaintiff is the dominus-limits and as such he cannot be deprived of seeking his right by way of amendment in the plaint.

By the impugned order the amendment has been refused because he has not impugned the Nagar Palika.

In AIR 1999 S.C. Page 976 “Savitri Devi V. District Judge, Gorakhpur” the Apex Court has held as under:

In Ramesh Hirachand Kundanmal V. Municipal Corporation of Greater Bombay, (1992) 2 SCC 524: (1992 AIR SCW 846), this Court discussed the matter at length and held that though the plaintiff is a ‘dominus litis’ and not bound to sue every possible adverse claimant in the same suit, the Court may at any state of the suit direct addition of parties and generally it is a matter of judicial discretion which is to be exercised in view of the facts and circumstances of a particular case. The Court said (Para 8 of AIR):

“The case really turns on the true construction of the rule in particular the meaning of the words “whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit”. The Court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the rule direct the addition of a plaintiff relating to the subject-matter of the existing action, the Court the power to join the intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions.”

The Court also observed that though prevention of actions cannot be said to be main object of the rule, it is a desirable consequence of the rule. The test for impleading parties prescribed in Razia Begum V. Anwar Begum, 1959 SCR 1111: (AIR 1958 SC 836), that the person concerned must be having a direct interest in the action was reiterated by the Bench.

Liberty is given to the applicant to make a fresh amendment application for impleading of Nagar Palika as a defendant. If such an application is filed the same be considered on merits before the disposal of the suit.

Subject to the aforesaid observation, civil revision is dismissed.

(Rajesh Tandon, J.)

Dated: 26.08.2004
Ashok